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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. LESTER RAMON SANDOVAL, Defendant and Appellant.	B291687 (Los Angeles County Super. Ct. No. VA143371)

APPEAL from the judgment of the Superior Court of Los Angeles County. Raul A. Sahagun, Judge. Affirmed.

Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael C. Keller, Steven E. Mercer and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant and appellant Lester Ramon Sandoval challenges his conviction by jury of the first degree murder of James Medrano, claiming a lack of substantial evidence demonstrating premeditation and deliberation. Defendant also contends, relying on *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*), the restitution fine should be stayed and the court operations and criminal conviction assessments should be stricken from his sentence.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was charged by information with one count of murder (Pen. Code, § 187, subd. (a)). It was alleged that, in committing the offense, defendant personally and intentionally used a firearm causing great bodily injury and death to the victim (§ 12022.53, subd. (d)).

The case proceeded to a jury trial in June 2018. The testimony and evidence received at trial established the following material facts.

Ian Valenzuela, Orlando Magana, Jesse Montreal and Dylan Martin were all friends of James Medrano. They regularly rode their skateboards together and hung out at the skate park in Norwalk. Medrano was a "great friend," like a "big brother" to everyone.

In November 2016, Medrano was not skating much due to an old injury, but he still regularly came to the park to hang out, draw and paint, or listen to music while visiting with friends.

Defendant had been a regular skater at the park for about a year. Valenzuela, Magana, Montreal and Martin were on friendly terms with defendant. None of them recalled having any quarrels with him.

Sometime in November 2016, defendant arrived at the skate park with a backpack. Defendant began bragging about having a gun. He was "flashing it" and showing everyone the magazine clip.

On the evening of November 19, 2016, Valenzuela, Magana, Montreal and Martin were all at the park, skating. There were "a lot of people there" at the time, either hanging out near the bleachers or skating. Magana, Montreal and Martin were all on the half-pipe. From the platform of the half-pipe, they could see the bleachers area nearby. Valenzuela arrived around 7:30 p.m. and began talking with friends. Medrano was seated in the bleachers, reading or sketching. Defendant was seated about 10 feet away.

Shortly before 8:00 p.m., Valenzuela was standing near the water fountain next to the bleachers. There was palpable "tension in the air." Valenzuela could see that Medrano and defendant were talking to one another, but he did not hear what they were saying. Medrano remained seated, but defendant got up and started pacing back and forth. Defendant seemed "anxious" and "worked up," like he "wanted to like do something."

From the half-pipe platform, Magana and Montreal noticed that everyone in the bleachers started to scatter, leaving only Medrano and defendant. Medrano stood up, facing defendant, but did not make any threatening moves or gestures toward defendant. Martin saw Medrano lift up his hands, with his palms facing upward, in a gesture that appeared to Martin to be asking defendant "what's going on."

Valenzuela, still standing near the water fountain, heard defendant say to Medrano "Count to 20 and see what happens." Medrano responded with "20" and "that's when [defendant]

looked both ways" and then "pulled the gun out from [his] waist[band]," "pointed it and shot [Medrano]." Magana, Montreal and Martin also saw defendant reach for his waistband and then fire four to five shots.

Defendant took off running. Valenzuela, Magana, Montreal and Martin, scared by the gunshots, started running away, but immediately turned back to check on their friend. Medrano was bleeding profusely and not moving. Valenzuela called 911. It was later determined by autopsy that Medrano suffered four fatal gunshot wounds to his torso.

Several sheriff's deputies arrived within a few minutes of Valenzuela calling 911. Valenzuela and Montreal were placed in the back of a patrol car, and Magana and Martin in another car. They were kept on the scene for hours and interviewed by deputies. Later, they all spoke with the homicide detectives assigned to the case, including Detective Sandra Nava.

Magana was just 16 years old at the time and scared and upset about being treated like a suspect in the death of his friend. Montreal was only 20 years old and also was scared of talking to the deputies.

Valenzuela, Magana, Montreal and Martin all conceded they were not entirely truthful when the deputies initially started asking them questions while seated in the back of the patrol cars. Magana explained that he did not want to admit to anything because he just wanted to be able to leave. His friend was still laying on the ground nearby. They each testified they eventually told what they knew when they were later interviewed by the detectives.

Valenzuela described defendant's appearance, including that he had long hair, normally in a ponytail or bun, and a tattoo

of an octopus with a girl. Magana and Montreal said defendant had long hair that he always wore tied up. Montreal also noted defendant had a hyena tattoo on his stomach. All four witnesses identified defendant at trial as the shooter of Medrano.

Jessica Aguilar Vargas testified that defendant was a friend of her son's from work, that he needed a place to stay, and that he had lived in her family's home for several months in 2016. She explained that sometime around Halloween in 2016, she gave defendant a haircut, but it looked bad the way she had trimmed it, so they decided to shave off all of defendant's hair.

Felicia Ruiz, Ms. Aguilar's daughter, also confirmed that defendant lived with her family for a number of months in 2016. Ms. Ruiz denied that defendant ever admitted to the shooting, and repeatedly said she could not recall ever telling Detective Nava that defendant had admitted the killing to her. On cross-examination, Ms. Ruiz said she did not know she had been recorded and had felt pressured into saying something to the detectives.

Detective Nava, a 30-year veteran of the Los Angeles County Sheriff's Department, testified to the investigation undertaken in the Medrano shooting. She also testified Ms. Ruiz gave a statement that was recorded in which she said defendant told her he had shot Medrano at the skate park, and that he had to do it quickly after Medrano arrived that evening because there were a lot of people around. Ms. Ruiz also said that defendant had killed Medrano because of something that had happened earlier, Medrano had "bumped" defendant at some point, or something along those lines. The audio recording of Ms. Ruiz's statement was played for the jury. Detective Nava further said she was able to recover several days of surveillance video from a

local store that depicted defendant going in and out of the store on days before and after the shooting, and that the first date on which they saw defendant with his long hair cut off was on December 10, 2016, after the shooting.

Defendant testified and denied any involvement in the shooting. He denied admitting the shooting to Ms. Ruiz. Defendant said he had never owned or used a gun. He said he had worked at an optical shop making glasses for some time but quit in 2015 to pursue his desire to be a tattoo artist. He admitted having a number of traditional Japanese tattoos, and admitted he had a tattoo on his chest of an octopus with a girl, as well as a tattoo of a hyena on his stomach. In 2016, he was staying with the Vargas family in Norwalk, after having met their son working at a seasonal warehouse job.

Defendant said he used to go to the skate park in Norwalk a lot as he had been riding skateboards since he was a kid. He had no grievances or issues with Medrano or anyone at the skate park. Defendant admitted being at the park on November 19, 2016. He said a lot of people were there that day, he skated for awhile and then went home around 6:00 p.m. and later heard about the shooting. Defendant said on November 19 he did not have long hair anymore, because he had already shaved his head after a "botched" haircut.

The jury found defendant guilty of first degree murder and found true the firearm use allegation. The court imposed a sentence of 25 years to life, plus a consecutive term of 25 years to life for the firearm use enhancement. The court awarded defendant 574 actual days of presentence custody credits. The court imposed a $40 court operations assessment (Pen. Code, § 1465.8, subd. (a)(1)), a $30 criminal conviction assessment

(Gov. Code, § 70373), and a $300 restitution fine (Pen. Code, § 1202.4, subd. (b)). The court imposed and stayed a $300 parole revocation fine (Pen. Code, § 1202.45). Finally, the court ordered payment of restitution in the amount of $6,867.51 payable to the Victim Compensation Board (Pen. Code, § 1202.4, subd. (f)).

This appeal followed.

DISCUSSION

1. Premeditation and Deliberation

Defendant contends there is no substantial evidence supporting the first degree murder finding and that his conviction should be reversed, or reduced to second degree murder. Defendant argues the evidence showed the shooting was rash and impulsive, not the result of a preconceived plan or deliberate thought. The contention lacks merit.

" 'When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' [Citation.] We determine 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.] In so doing, a reviewing court 'presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.' " (*People v. Avila* (2009) 46 Cal.4th 680, 701.) "Reversal on this ground is unwarranted unless it appears 'that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].' [Citation.]" (*People v. Bolin*

(1998) 18 Cal.4th 297, 331 (*Bolin*); accord, *People v. Manriquez* (2005) 37 Cal.4th 547, 577 (*Manriquez*).)

In assessing the evidence in support of a premeditation finding, we are guided by *People v. Anderson* (1968) 70 Cal.2d 15 and its progeny. *Anderson* identified three categories of evidence that may be helpful in reviewing the sufficiency of evidence supporting a first degree murder finding: "planning activity, preexisting motive, and manner of killing." (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1069 (*Mendoza*), citing *Anderson,* at pp. 26-27.) However, since *Anderson*, the Supreme Court has repeatedly made clear that "[t]hese three categories are merely a framework for appellate review; they need not be present in some special combination or afforded special weight, nor are they exhaustive." (*People v. Booker* (2011) 51 Cal.4th 141, 173; accord, *Mendoza*, at p. 1069 & *Manriquez*, *supra*, 37 Cal.4th at p. 577 [" '*Anderson* was simply intended to guide an appellate court's assessment whether the evidence supports an inference that the killing occurred as the result of preexisting reflection rather than unconsidered or rash impulse' "].)

We find the evidence here more than ample to support the jury's premeditation finding. There was evidence of planning because defendant arrived at the skate park with a gun concealed in his waistband. (*People v. Steele* (2002) 27 Cal.4th 1230, 1250 [evidence of planning activity reasonably inferred where the defendant carried a knife in his pocket into the victim's home].) The manner of killing bore characteristics of reflection and deliberation. Defendant was seen talking with the victim for several minutes, then standing up and pacing anxiously while continuing to talk with the victim, who was not threatening defendant in any way. Defendant was heard taunting the victim,

saying "Count to 20 and see what happens." After the victim responded with "20," defendant looked over his shoulder, pulled his gun out his waistband, and shot the victim four times in the torso at close range. (*People v. Marks* (2003) 31 Cal.4th 197, 230 [sufficient evidence of premeditation where the defendant ordered another individual out of the car before confronting the victim, and then shot the victim at close range with no evidence of provocation or struggle].) There was also evidence of motive. The jury heard the recorded interview of Ms. Ruiz in which she told Detective Nava that defendant had admitted to shooting the victim because of something that had happened at the park a few days before.

Defendant's contention the evidence showed no time for deliberation and merely an impulsive shooting is not persuasive. As our Supreme Court has repeatedly explained, " '[t]he process of premeditation and deliberation does not require any extended period of time. "The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow each other with great rapidity and cold, calculated judgment may be arrived at quickly . . . ." [Citations.]' " (*Bolin*, *supra*, 18 Cal.4th at p. 332; accord, *Mendoza*, *supra*, 52 Cal.4th at p. 1069.)

2. The Court Operations Assessment, Criminal Conviction Assessment and Restitution Fine

Defendant challenges the court's imposition at sentencing of a $40 court operations assessment (Pen. Code, § 1465.8), a $30 criminal conviction assessment (Gov. Code, § 70373), and a $300 restitution fine (Pen. Code, § 1202.4). Citing *Dueñas*, *supra*, 30 Cal.App.5th 1157, defendant argues it was a violation of due process for the trial court to impose the two assessments and the

restitution fine without a showing by the People of his ability to pay.

Defendant concedes he did not object on these, or any, grounds in the trial court. The contention has therefore been forfeited. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153-1155 (*Frandsen*) [finding forfeiture where no objection raised in trial court to imposition of court operation assessment, criminal conviction assessment and restitution fine]; see also *People v. Avila* (2009) 46 Cal.4th 680, 729 [finding forfeiture where the defendant failed to object to imposition of restitution fine under Pen. Code, former § 1202.4 based on inability to pay].)

We reject defendant's contention his forfeiture should be excused for the same reasons articulated in *Frandsen*.

Finally, even if we excused defendant's forfeiture, we would reject his claim. Nothing in the record supports the contention that the imposition of the $300 restitution fine (the statutory *minimum* amount for a felony), the $40 court operations assessment and the $30 criminal conviction assessment was fundamentally unfair to defendant or violated due process. The facts here bear no similarity to the unique factual circumstances presented in *Dueñas.*

Defendant was given notice these assessments would be imposed in the probation report prepared prior to sentencing. After a sentencing hearing at which defendant participated with the assistance of counsel, the court imposed the 50 years to life sentence and the now-challenged assessments and fine pursuant to clear statutory authority. Not only does the record show defendant had some past income-earning capacity but going forward we know he will have the ability to earn prison wages over a lengthy period. In the absence of an objection by

defendant, the trial court could presume the assessments and fine would be paid out of defendant's future prison wages. (See, e.g., *People v. Frye* (1994) 21 Cal.App.4th 1483, 1487; *People v. Hennessey* (1995) 37 Cal.App.4th 1830, 1837 [ability to pay includes a defendant's ability to obtain prison wages].) Defendant has not articulated any basis for finding prejudice or a due process violation.

DISPOSITION

The judgment of conviction is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

STRATTON, J.